Power Jet Industrial Cleaning, Inc. *and* Local 283, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-19548

31 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

Upon a charge filed by the Union 14 July 1981 the General Counsel of the National Labor Relations Board issued a complaint 16 September 1982 against the Company, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act.

The complaint alleges that the Company violated Section 8(a)(3) and (1) of the Act by permanently laying off or terminating James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus because of their activities on behalf of, membership in, and sympathies for the Union about 9 July 1981 and by failing and refusing to reinstate them since that date. The complaint further alleges that the Union is the exclusive collective-bargaining representative of a majority of the employees in an appropriate unit and that the Company refused to recognize the Union upon demand since about 9 July 1981. The complaint also alleges that the Company's permanent layoff or termination of the four employees and its failure and refusal to reinstate them constitute unfair labor practices that are so egregious in nature and pervasive in character as to render nugatory the holding of a fair representation election and to warrant the entry of a remedial bargaining order since about 9 July 1981 and that, therefore, the Company violated Section 8(a)(5) and (1) in certain respects. The Company's purported answer to the complaint was received by the Regional Office 12 September 1983. In its purported answer the Company did not specifically admit or deny the allegations of the complaint, but it asserted that it discontinued business 31 July 1982 and so notified the State of Michigan that it has no assets, that it has not existed for approximately 14 months, and that it has no office.

On 3 February 1984 the General Counsel filed directly with the Board a motion to transfer case to the Board and for default summary judgment. On 6 February 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Company did not file a response to the Notice to Show Cause and therefore the allegations of the Motion for Default Summary Judgment stand uncontroverted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on the Company specifically states that unless an answer is filed within 10 days from the service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." According to the Motion for Default Summary Judgment, on 27 October 1982 the Regional Attorney wrote to the Respondent informing it that Regional Office records indicated that the Respondent had not filed an answer and that if an appropriate answer were not filed by 8 November 1982, a Motion for Default Summary Judgment would be sought. On 6 April 1983 a copy of the complaint and notice of hearing was served on Robert L. Jones, the Company's president and part owner. About April 1983 Robert L. Jones orally advised the General Counsel that he did not intend to participate in or attend any hearing in the instant case, unless the complaint was amended to allege that he was personally liable. About 15 August 1983 the Regional Office advised the Company by letter to its agents, Robert L. Jones and Charles Mosley, the Company's vice president and part owner, that Regional Office records indicated that the Company still had not filed an answer and that if an appropriate answer were not filed by 29 August 1983, a Motion for Default Summary Judgment would be sought. About 29 August 1983 the General Counsel telephoned Robert L. Jones to solicit an answer to the complaint and explained the correct form for an appropriate answer including the need to specifical-

ly respond to each paragraph of the complaint. As noted above, on 12 September 1983, the Regional Office received a purported answer from the Company. This answer does not meet the requirements for an answer set out in Section 102.20 of the Board's Rules and Regulations because it does not respond with specificity to any of the allegations of the complaint. Accordingly, we grant the General Counsel's Motion for Default Summary Judgment insofar as the complaint alleges that about 9 July 1981 the Company violated Section 8(a)(3) and (1) of the Act by permanently laying off or terminating and by failing and refusing to reinstate four named employees because of their membership in, activities on behalf of, and sympathies for the Union.[1]

As noted above, the complaint additionally alleges that the Company's permanent layoff or termination of the four named employees constitutes unfair labor practices which are so egregious and pervasive as to render nugatory the holding of a fair representation election and warrants the entry of a remedial order requiring the Respondent to bargain with the Union commencing from on or about 9 July 1981. In determining whether a bargaining order is appropriate to remedy an employer's misconduct, we utilize the test delineated in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In evaluating the nature and pervasiveness of an employer's unfair labor practices, that test requires us to consider many factors before making a determination as to whether a bargaining order is warranted. See, e.g., *Ohio New & Rebuilt Parts*, 267 NLRB 420 (1983); *Martin City Ready Mix*, 264 NLRB 450 (1982). The complaint in the instant case merely alleges that four named employees were unlawfully discharged and in conclusionary terms that such unfair labor practices preclude the holding of a fair election and that therefore a bargaining order is warranted. In our view, the complaint does not allege sufficient facts to determine whether a bargaining order is warranted and whether the Company therefore violated Section 8(a)(5) and (1) of the Act as alleged. Accordingly, we deny the Motion for Default Summary Judgment insofar as it alleges that a bargaining order is appropriate and that the Respondent violated Section 8(a)(5) and (1) of the Act.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Company, a Michigan corporation, is engaged in the stripping and cleaning of metal for industrial use at its facility in Taylor, Michigan. During the fiscal year ending 31 May 1981, a representative period, the Company, in the course and conduct of its operations, had gross revenues in excess of $500,000 and performed services valued in excess of $50,000 for various enterprises located within the State of Michigan, each of which, during the same period of time, in the course and conduct of its business operations, sold goods and materials valued in excess of $50,000, which goods were shipped directly to customers located outside the State of Michigan from its Michigan facilities. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About 9 July 1981 the Company, by its agent Barney Twiggs, at its Taylor plant, did permanently lay off or terminate James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus, employees of the Company, and since that date has failed and refused, and continues to fail and refuse, to reinstate said employees to their former positions of employment. The Company did permanently lay off or terminate James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus because of their membership in, activities of behalf of, and sympathies for the Union.

Accordingly, by the acts and conduct set forth above, the Company did discriminate, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act. We further find that, by the acts and conduct set forth above, the Company did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[1] The complaint additionally alleges that on 16 February 1982, subsequent to the filing of charges and the issuance of a complaint in Case 7–CA–19548 with respect to the allegedly unlawful permanent layoffs or terminations, the Regional Director for Region 7 approved an informal settlement agreement in that case executed and entered into by the Company and the Union. This agreement provided, inter alia, that the Company would make certain backpay payments to the discriminatees in installments commencing 1 April 1982. The complaint additionally alleges that since on or about 1 August 1982 the Company has failed to make the backpay installment payments required by the settlement agreement and orders that the Regional Director's approval of the settlement agreement is withdrawn and the settlement agreement is vacated. We find that the settlement agreement was properly vacated by the Regional Director.

CONCLUSIONS OF LAW

By permanently laying off or terminating James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus about 9 July 1981 and thereafter by failing and refusing to reinstate them, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(3) and (1) of the Act, we shall order it to cease and desist and that it take certain affirmative action designed to effectuate the policies of the Act. Since we have found that the Respondent permanently laid off or terminated James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus and failed and refused to reinstate them in violation of the Act, we shall order the Respondent to offer them immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We shall further order the Respondent to make the above-named employees whole for any loss of earnings they may have suffered as a result of the discrimination against them by payment to them of the amount they normally would have earned from the date of their permanent layoff or termination, on or about 9 July 1981, with backpay to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See *Isis Plumbing Co.*, 138 NLRB 716 (1962). We shall order the Respondent to remove from its files any reference to the unlawful permanent layoffs or terminations and to notify the employees in writing that this has been done and that the permanent layoffs or terminations will not be used as a basis for future personnel actions against them. We shall also order the Respondent to post an appropriate notice to employees.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Power Jet Industrial Cleaning, Inc., Taylor, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Permanently laying off or terminating and failing and refusing to reinstate employees, or otherwise discriminating against employees because of their membership in, activities on behalf of, and sympathies for Local 283, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from the personnel records of James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Augus, or other files, any reference to their permanent layoffs or terminations about 9 July 1981, and notify them in writing that this has been done and that evidence of their unlawful permanent layoffs or terminations will not be used as a basis for future personnel actions against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Taylor, Michigan place of business copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] We shall leave to the compliance stage of this proceeding the determination of the significance, if any, of the Respondent's assertions in its answer that it has discontinued its business and has neither assets nor officers.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT permanently lay off or terminate and fail and refuse to reinstate our employees, or otherwise discriminate against our employees because of their membership in, activities on behalf of, and sympathies for Local 283, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL expunge from our files any references to the permanent layoffs or terminations of James Prodan, Dawn Prodan, Gary Rinehart, and Stephen Angus, and WE WILL notify them that this has been done and that evidence of these unlawful actions will not be used as a basis for future personnel actions against them.

POWER JET INDUSTRIAL CLEANING, INC.